

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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J. KINGS FOOD SERVICE
PROFESSIONALS, INC.,

Plaintiff,

- against -

NAVIN BROTHERS FOOD SERVICE, INC.
and JOSEPH E. NAVIN, JR.,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 13 2018 ★

LONG ISLAND OFFICE

ORDER
17-CV-5472 (JFB)(SIL)

JOSEPH F. BIANCO, District Judge:

On May 29, 2018, the Court entered default judgment against defendants and referred the matter to Magistrate Judge Steven I. Locke for a Report and Recommendation on damages and other relief sought by plaintiff. (ECF No. 15.) On August 15, 2018, Judge Locke issued a Report and Recommendation (“R&R”), recommending that plaintiff be awarded \$688,054.02 plus post-judgment interest in accordance with 28 U.S.C. § 1961(a), and \$1281.72 in costs. (ECF No. 17.) The R&R further recommends that plaintiff’s request for attorney’s fees be denied with leave to submit additional supporting documentation. Additionally, the R&R notes that, although plaintiff is entitled to prejudgment interest, plaintiff has neither requested nor submitted adequate documentation from which the Court may calculate prejudgment interest. The R&R recommends that plaintiff be granted leave to submit a supplemental declaration requesting prejudgment interest and setting forth the specific calculations for such amount. The R&R was served on defendants on August 27, 2018. (ECF No. 18.) Judge Locke directed that any objections to the R&R be filed within fourteen (14) days of receipt of the same. (ECF No. 17 at 13.) The deadline has since passed, and no party has filed an objection.

Where there are no objections, the Court may adopt a report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended

to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) *and* Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.''" (quoting *Thomas*, 474 U.S. at 155)).

Although no party has objected to the R&R, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety.

Accordingly, IT IS HEREBY ORDERED that plaintiff is awarded \$688,054.02 plus post-judgment interest in accordance with 28 U.S.C. § 1961(a), and \$1,281.72 in costs.

IT IS FURTHER ORDERED that plaintiff's request for attorney's fees is denied without prejudice and that plaintiff shall submit further documentation in support of that request in accordance with the R&R on or before October 15, 2018.

IT IS FURTHER ORDERED that, to the extent plaintiff wishes to seek prejudgment interest, plaintiff shall also submit a declaration requesting prejudgment interest and setting forth the specific calculations for such amount on or before October 15, 2018. A failure to provide further documentation in support of attorney's fees or prejudgment interest by October 15, 2018 will result in the denial of those amounts.

IT IS FURTHER ORDERED that plaintiff shall serve a copy of this Order on defendants and file proof of service with the Court.

SO ORDERED.


Joseph F. Bianco
JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: September 13, 2018
Central Islip, New York